

14-19-00154-CR

In the
Court of Appeals
For the Fourteenth Judicial District of Texas
At Houston

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14th COURT OF APPEALS
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CHRISTOPHER A. PRINE
Clerk

◆
No. 1527611

In the 208th District Court
Of Harris County, Texas

◆
THE STATE OF TEXAS

Appellant

V.

JOHN WESLEY BALDWIN

Appellee

◆
**STATE'S SECOND REQUESTED
SUPPLEMENTAL POST-SUBMISSION BRIEF**
◆

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TO THE HONORABLE COURT OF APPEALS:

**REPLY TO THIS COURT’S SECOND REQUEST FOR
SUPPLEMENTAL POST-SUBMISSION BRIEFING**

- A. This Court’s analysis of the sufficiency of the search-warrant affidavit at issue in this appeal should be governed by Articles 18.02(a)(14) and 18.0215 of the Texas Code of Criminal Procedure, which apply specifically to searches of cellular telephones.**

In a letter dated April 9, 2020, this Court requested that the State submit by April 24, 2020, a supplemental brief addressing whether its analysis of the search-warrant affidavit at issue in this case is governed by Articles 18.02(a)(14) and 18.0215 of the Texas Code of Criminal Procedure. Article 18.02 provides that “[a] search warrant may be issued to search for and seize...a cellular telephone..., subject to Article 18.0215. TEX. CODE CRIM. PROC. 18.02(a)(14). Article 18.0215 states that “[a] peace officer may not search a person’s cellular telephone..., pursuant to a lawful arrest of the person without obtaining a warrant under this article.” TEX. CODE CRIM. PROC. 18.0215(a). The article further provides that such a warrant must be issued by a judge in the same judicial district as either the agency employing the officer in possession of the at-issue cellular telephone or as the telephone itself. TEX. CODE CRIM. PROC. 18.0215(b).

Finally, Article 18.0215 requires that the sworn application must:

- (1) state the name, department, agency, and address of the applicant;

- (2) identify the cellular telephone...to be searched;
- (3) state the name of the owner or possessor of the telephone...to be searched;
- (4) state the [applicable] judicial district;...and
- (5) state the facts and circumstances that provide the applicant with probable cause to believe that:
 - (A) criminal activity has been...committed; and
 - (B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).

TEX. CODE CRIM. PROC. 18.0215(c). While published cases discussing the applicability of Article 18.0215 are not plentiful, courts have looked to the statute, “[a]bsent exceptional circumstances..., when the State seeks to search a cellphone pursuant to a lawful arrest[.]” *Harmel v. State*, --- S.W.3d ---, 2020 WL 913055, *15 (Tex. App.—Austin 2020, pet. ref’d).

In the present case, the seizure of the appellee’s cellular telephone followed his lawful arrest for unsafe lane change, failure to present a driver’s license upon arrest, and expired driver’s license. (I R.R. – 16). The search warrant was indisputably obtained for the purpose of searching the at-issue cellular phone. (III R.R. – 11-13). And the affidavit provided all necessary information to comply with Article 18.0215. *See* TEX. CODE CRIM. PROC. 18.0215; (III R.R. – 11-13). For these reasons, the search warrant should be

analyzed by this Court under Article 18.0215, and, because it complies with the statute, the warrant should be found sufficient.

CONCLUSION

The trial court erred in granting-in-part the appellee's motion to suppress evidence obtained from his cellular telephone. The State therefore respectfully requests that this Court reverse the portion of the trial court's order granting-in-part the appellee's motion to suppress.

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